

At the United States District Court for the Southern District of New York, at 300 Quarropas Street, White Plains, New York on the _____ day of _____, 2007.

PRESENT: _____

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HOWARD GALE AND RONA GILBERT, Docket No.: 05 CIV.2450(GEL)

Plaintiffs,

-against-

SERVICE UNLIMITED,

Defendant.

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JOINT PRE TRIAL ORDER
SUPPLEMENTED BY DEFENDANT

I. NATURE OF CASE

This is a case in which the Defendant, Service Unlimited, cleaned the outside of a home in preparation for putting clear stain on same.

The owners complained of stains in the wood and work was ceased. Litigation was commenced.

II. JURY/NON-JURY

A jury trial is requested.

III. STIPULATED FACTS

The parties agree that the Defendant did work on the Plaintiffs' home and that it was cleaned and approximately 40 square feet of frontage on the home was covered with a clear seal.

IV. PARTIES CONTENTIONS

DEFENDANT'S CONTENTIONS:

1. Defendant's contentions are that the Defendant properly cleaned the home and under normal circumstances certain stains will show from drippage under the window sills, etc. Thereafter, when a clear stain was applied to the area approximately 40 square feet, the homeowner complained and worked was ceased. The Defendant say that they did nothing negligent or improper, it was merely the natural conditions of wood. Natural Wood shows stains from various conditions, bleaching lightens some of those stains and darkens others.

2. The issue of insurance is not alleged in this action and not properly before the Jury.

V. ISSUES TO BE TRIED

The issue of liability and the issue of damages. It is unrealistic to expect that the Defendant should reside the entire home especially when three sides were never touched.

VI. DEFENDANT'S EXHIBITS

1. Photographs (33) that show the condition of the house before and after the work was done.

2. Photographs (25) taken in December 2006.

3. Contract.

4. The file of Defendant Service Unlimited regarding the property in question.

5. All deposition testimony of the Plaintiffs, Howard Gale and Ronna Gilbert.

VII. DEFENDANT'S WITNESS LIST

1) Marty Heiser, President
Service Unlimited

Egore Skavik, Manager

Mark Bukovsky, Crew Chief

Robert Mannion, Person who viewed the house for the Defendant after the work was started.

Robert Buttersby Cabot, employee who gave opinion concerning the property and the work to be done.

Bojdan Dymel, the painter on the job

The Defendant requests no Pre Trial Charge.

VIII.

The Defendant does not consent to or agree with the alleged joint Pre-Trial Order of the Plaintiff.

MOTION IN LIMINE

1. Issue of Insurance
Defendant had all insurances as advertised.

2. Plaintiff has never provided any estimates, itemized bills for the cost of repair to the premises, therefore, they should be precluded from offering evidence as to same.

JURISDICTIONAL MOTION

Defendant seeks to apply to the Court to prove that this matter is not properly before this Court due to personal and subject matter jurisdiction.

JOSEPH A. MARIA, P.C.

By: S/.

Joseph A. Maria, Esq. (0209)
Attorneys for Defendant
301 Old Tarrytown Road
White Plains, New York 10603
Phone No.: 914-684-0333
Fax No.: 914-684-9772
File No. 08-0428

STEVEN R. KRAVITZ, LLC

By:

Steven R. Kravitz, Esq.
Attorneys for Plaintiffs
271 Madison Avenue, Suite 200
New York, New York 10016
Phone No.: (212) 682-0707
Fax No.: (212) 682-8821

SO ORDERED